

**JUL 28 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHN R. McHONE,

Defendant - Appellant.

No. 05-30533

D.C. No. CR-04-00261-EJL

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Idaho  
Edward J. Lodge, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

John R. McHone appeals from the sentence of 12 months and one day and order of restitution, imposed after his guilty-plea conviction for theft of public property and aiding and abetting, in violation of 18 U.S.C. §§ 641, 2. We have

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291 and affirm.

McHone contends the evidence did not support an upward enhancement to his sentence based on a finding that he was responsible for a loss amount of \$17,000 worth of timber. The district court, however, had adequate evidence of the market value of the timber from the trees which McHone admitted he and his associates illegally removed. *See* U.S.S.G. §§ 1B1.3(a), 2B1.1 and cmt. n.3; *see also United States v. Bright*, 353 F.3d 1114, 1119 (9th Cir. 2004). This same evidence supports the district court's order imposing \$17,150.25 in restitution. *See* 18 U.S.C. § 3664(h); *see also United States v. Stoddard*, 150 F.3d 1140, 1147 (9th Cir. 1998).

McHone's remaining arguments, raised for the first time in his reply brief, are deemed waived. *See United States v. Curtin*, 443 F.3d 1084, 1094 (9th Cir. 2006).

**AFFIRMED.**